

Deficiencies; corporate taxpayer no longer recognized as an exempt organization. The unrelated business income tax shown on a Form 990-T by a corporate taxpayer with respect to which the period of limitations has already expired can be used in determining the amount of a deficiency of the corporation when it is no longer recognized as an exempt organization where an extension of the period of limitations was obtained in connection with its Form 990.

The question has arisen whether, under the circumstances described below, unrelated business income tax shown by a corporate taxpayer on Form 990-T, Exempt Organization Business Income Tax Return, can be used in determining the amount of a deficiency of the corporate taxpayer when no longer recognized as tax exempt.

The taxpayer, a corporation, while recognized as an organization exempt from tax, filed in good faith a Form 990, Return of Organization Exempt From Income Tax, for the year in question. Since it had unrelated business income, it also had previously filed a Form 990-T accompanied by a tax payment. During a review of the organization's exempt status, an extension of the period of limitations on assessment and collection was obtained with respect to the Form 990. An extension could not be obtained concerning the Form 990-T since the period had already expired, because of the difference in the filing dates of Forms 990 and 990-T. Subsequently the recognition of the taxpayer's exempt status was revoked and a deficiency determined.

Section 11 of the Internal Revenue Code of 1954 imposes a tax for each taxable year on the taxable income of every corporation.

Section 511 of the Code imposes the normal tax and the surtax as provided by section 11 upon the unrelated business income of tax exempt organizations.

Section 6501(a) of the Code provides that taxes imposed by the Code shall be assessed within three years after the date the return was filed, unless, among other exceptions, prior to the expiration of this period, a written agreement between the Commissioner and the taxpayer has been executed pursuant to section 6501(d)(4) to extend the assessment period.

Section 6501(g)(2) of the Code provides that when a taxpayer in good faith files a return under section 6033, (Form 990), and thereafter is held to be taxable, such return is deemed to be the return of the organization for the purpose of determining the periods of limitation on assessment and collection.

Section 6211(a)(1)(A) of the Code defines a deficiency in the case of the income tax imposed by subtitle A as the amount by

which the tax imposed by subtitle A exceeds the amount shown as such tax by the taxpayer upon his return.

Since, under section 6501(g)(2) of the Code, a return filed on Form 990 by a taxpayer thereafter held to be a taxable organization is deemed to be the return of the organization for the purpose of determining the periods of limitation on assessment and collection, the fact that such periods may have expired with respect to the Form 990-T is immaterial.

Taxable corporations and exempt organizations with unrelated business income are both subject to tax under section 11. As a result of the revocation of the recognition of the organization's exempt status, the correct liability for tax under section 11, subtitle A, exceeds the tax liability under section 11 previously reported by the taxpayer on his return, Form 990-T, and a deficiency exists pursuant to section 6211(a)(1)(A). Section 6211(a)(1)(A) does not specify that the tax must be reported on the same form. It states that the amount must be shown as the tax by the taxpayer upon his return. An organization which believes itself to be exempt and which has unrelated business taxable income may be required to file two returns.

Accordingly, since an extension of the period of limitations for assessment and collection has been obtained for its Form 990, the unrelated business income tax shown by a corporate taxpayer on Form 990-T can be used in determining the amount of a deficiency of the corporate taxpayer when no longer recognized as tax exempt.

See Rev. Rul. 62-10, 1962-1 C.B. 305, as modified by Rev. Rul. 69-247, 1969-1 C.B. 303, which holds that the filing of a Form 990 commences the running of the period of limitations for assessment and collection of unrelated business income tax imposed by section 511 of the Code if the Form 990 discloses sufficient facts to appraise the Service of the potential existence of unrelated business income.